



FILED

Mar 03 2008, 8:54 am

Kevin L. Smith

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of the supreme court,
court of appeals and
tax court

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**IN THE
COURT OF APPEALS OF INDIANA**

RYAN J. HOWELL,)
)
 Appellant-Defendant,)
)
 vs.) No. 19A01-0709-CR-451
)
 STATE OF INDIANA,)
)
 Appellee-Plaintiff.)

APPEAL FROM THE DUBOIS SUPERIOR COURT
The Honorable Elaine B. Brown, Judge
Cause No. 19D01-0506-FD-0473

MARCH 3, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

HOFFMAN, Senior Judge

Defendant-Appellant Ryan J. Howell appeals his conviction of possession of methamphetamine, a Class D felony. We affirm.

Howell raises one issue for our review, which we restate as: Whether Howell's conviction for possession of methamphetamine should be reversed because it is inconsistent with the jury's acquittal of Howell on charges of possession of marijuana and possession of paraphernalia.

On June 4, 2005, David Arteaga was driving a vehicle that included Joshua Pate as a front seat passenger and Howell as a passenger in the back seat on the driver's side. Officer Kristin Meyer noted that the vehicle was exceeding the speed limit, and she initiated a traffic stop.

After making the stop, Officer Meyer noted that the occupants of the vehicle were very nervous and that they would not make eye contact with her. A back up officer arrived, and Officer Meyer requested to search the vehicle. Arteaga initially denied consent but consented after he was told that an officer was going to bring a drug-sniffing dog.

Prior to the beginning of the search, Howell would not look at Officer Meyer and continued to look down at the floorboard immediately below his feet. Officer Meyer noted that Howell would occasionally look up and peer into a nearby field before resuming his study of the floorboard. After Howell exited the vehicle, Officer Meyer observed a baggie containing methamphetamine in plain view in the spot where Howell's feet had been. A search under the seat pad of a child seat located on the passenger side of

the back seat of the vehicle also revealed a baggie containing marijuana and a pen casing tube with black residue.

The three occupants of the vehicle were charged with possession of the three illegal items. Pate pled guilty to possession of methamphetamine and paraphernalia and agreed to testify against Howell and Arteaga in exchange for dismissal of the marijuana charge. After acknowledging in his trial testimony that he did not like Howell because Howell had incriminated him in another criminal manner, Pate testified that he gave the illegal items to Howell before the stop. Pate further testified that Howell had promised to get rid of the items by eating them.

The jury found Howell guilty of possession of methamphetamine and not guilty on the possession of marijuana and paraphernalia charges. On appeal, Howell contends that his conviction for possession of methamphetamine should be reversed because it is inconsistent with the jury's not guilty verdict on the other counts.

An Indiana appellate court will review findings and verdicts to determine whether they are consistent; however, "perfect logical consistency is not demanded and only extremely contradictory and irreconcilable verdicts warrant corrective action" by an appellate court. *Butler v. State*, 647 N.E.2d 631, 636 (Ind. 1995). The jury is the trier of fact and may attach to the evidence whatever weight and credibility it believes to be warranted. *Id.* Ordinarily, where the trial of a defendant results in acquittal upon some charges and a conviction upon others, the results will survive a claim of inconsistency where the evidence is sufficient to support the conviction. *Hodge v. State*, 688 N.E.2d

1246, 1248 (Ind. 1997). In resolving such a claim, the court “will not engage in speculation about the jury’s thought processes or motivation.” *Id.*

The crux of Howell’s argument is that the only evidence of his possession of methamphetamine and marijuana is Pate’s testimony that Pate gave the illegal substances to Howell as a result of Howell’s promise to dispose of them. Howell reasons that because the jury did not believe Pate’s testimony about the marijuana and paraphernalia, it cannot logically believe his testimony about the methamphetamine.

Our review of the evidence shows, however, that there is evidence of methamphetamine possession that is independent of Pate’s testimony. Officer Meyer testified that Howell tried to avoid her gaze and kept staring at his feet. When Howell exited the vehicle, the methamphetamine was located where Howell’s feet had been. The jury could have completely discredited Pate’s testimony about passing the illegal substances to Howell and could have reached the reasonable conclusion that Officer Meyer’s testimony and the location of the substances and paraphernalia established that Howell did not possess the marijuana and paraphernalia located in a hidden spot across the back seat but did possess the methamphetamine that was apparently hidden under his feet. The conviction for possession of methamphetamine is not extremely contradictory to or irreconcilable with the acquittal on the other two charges.

Affirmed.

NAJAM, J., and CRONE, J., concur.